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8 **UNITED STATES DISTRICT COURT**
9 **SOUTHERN DISTRICT OF CALIFORNIA**
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11 UNITED STATES OF AMERICA,
12
13 vs. Plaintiff,
14 RAFAEL AYALA-MENDEZ,
15 Defendant.

CASE NO. 96cr1826-IEG
(related to 10cv117-IEG)

ORDER DENYING MOTION TO
CORRECT AND MODIFY;
DENYING CERTIFICATE OF
APPEALABILITY

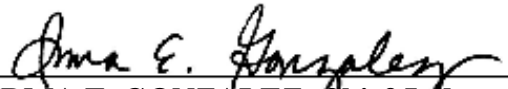
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17 Defendant Rafael Ayala-Mendez has filed a third motion asking the court to modify and
18 reduce his June 23, 1997 sentence following his conviction for one count of conspiracy to
19 manufacture methamphetamine in violation of 21 U.S.C. §§ 846 and 841(a)(1). Defendant files
20 his motion under the authority of 18 U.S.C. § 3582(c)(2), which permits a defendant to seek a
21 reduction of sentence where there has been a change in the sentencing guidelines. However,
22 defendant does not point to any change in the sentencing guidelines; instead, he once again attacks
23 the substance of the original sentence. Thus, the Court finds defendant's motion is properly
24 characterized as a motion under 28 U.S.C. § 2255.

25 Because defendant has now filed two prior motions under § 2255, he must first get
26 permission from the Ninth Circuit Court of Appeals if he wishes to proceed. 28 U.S.C. § 2255(h);
27 United States v. Lopez, 577 F.3d 1053, 1061 (9th Cir. 2009) (district court lacks jurisdiction to
28 consider second or success motion under § 2255 unless defendant first receives authorization from

1 the Court of Appeals. Therefore, the Court DENIES defendant's current motion and also DENIES
2 a certificate of appealability. The Clerk is directed to close this case. The Clerk is further directed
3 to accept no further filings from defendant.

4 **IT IS SO ORDERED.**

5 **DATED: February 9, 2010**

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7 **IRMA E. GONZALEZ, Chief Judge**
8 **United States District Court**